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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,858	02/23/2004	Jason Tyler Griffin	ID-267 (80213)	9424

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EXAMINER

VU, MICHAEL T

ART UNIT	PAPER NUMBER
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2683

DATE MAILED: 12/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/784,858	Applicant(s) GRIFFIN, JASON TYLER	
	Examiner Michael Vu	Art Unit 2683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>09/20/2004</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 5-10, 12-16, 23-25, 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minear (US 2004/0203616) in view of Forslow (US 6,608,832).

Regarding **claims 1 and 23**, Minear teaches A cellular communications system comprising: a plurality of mobile cellular communications devices each associated with a respective user (Fig. 1, elements 12, 18, 21); at least one cellular base station for wirelessly communicating with said plurality of mobile cellular communications devices (Fig. 2, BTS element 44), **but is silent on** said at least one cellular base station having a capacity associated therewith; a central station for determining available capacity of said at least one cellular base station based upon active wireless communications with said mobile cellular communications devices; and a subscription server for cooperating with said central station to provide non-real time subscription data to users on respective mobile cellular communications devices via said at least one cellular base station when the determined available capacity thereof is greater than a threshold.

However, Forslow teaches the packet switch bearers may be selected for non-real time such as Internet type data applications such as surfing on the worldwide web,

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file transfer, e-mail, and telnet, all of which require fast channel access and bursty data transfer capability (Title, Abstract, C5, L37-51, C12, L57-67 to C13, L1-27).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Minear, such that said at least one cellular base station having a capacity associated therewith; a central station for determining available capacity of said at least one cellular base station based upon active wireless communications with said mobile cellular communications devices; and a subscription server for cooperating with said central station to provide non-real time subscription data to users on respective mobile cellular communications devices via said at least one cellular base station when the determined available capacity thereof is greater than a threshold, to provide a relatively large amount of data is transmitted over a relative short time for sharing with other users.

Regarding **claims 2 and 24**, Minear/Forslow teach the cellular communications system of claim 1, however, Forslow further teach wherein said subscription server cooperates with said central station to discontinue providing subscription data when the determined available capacity falls below the threshold (Abstract, C3, L11-24, C7, L13-21).

Regarding **claims 3 and 25**, Minear/Forslow teach the cellular communications system of claim 1, however, Forslow further teach wherein said subscription server cooperates with said central station to discontinue providing subscription data to respective mobile cellular communications devices based upon an initiation of a telephone call (C3, L11-24).

Regarding **claims 5, 12, and 27**, Minear/Forslow teach the cellular communications system of claim 1, however, Forslow further teach wherein said at least one cellular base station generates capacity usage information, and wherein said central station determines the available capacity based thereon (C4, L27-41).

Regarding **claims 6, 13, and 28**, Minear/Forslow teach the cellular communications system of claim 1, however, Minear further teach wherein said subscription server further cooperates with said central station to provide a subscription data menu to users on respective mobile cellular communications devices, and wherein users order non-real time subscription data based upon the subscription data menu (Fig. 3, [0016, 0020]).

Regarding **claims 7, 14**, Minear/Forslow teach the cellular communications system of claim 1, however, Minear further teach further comprising a wide area network (WAN) connecting said subscription server to said central station (Fig. 1).

Regarding **claims 8, 15, and 29**, Minear/Forslow teach the cellular communications system of claim 1, however, Minear further teach wherein the subscription data comprises at least one of news articles, books, video game data, image data, and television programming schedule data [0014, 0029].

Regarding **claims 9, 16, and 30**, Minear/Forslow teach the cellular communications system of claim 1, however, Minear further teach wherein the subscription data comprises electronic mail (email) data (C3, L65-67 to C4, L1-9).

Regarding **claim 10**, Minear teaches a cellular communications system comprising: a plurality of mobile cellular communications devices each associated with

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a respective user (Fig. 1, elements 12, 18, 21); at least one cellular base station for wirelessly communicating with said plurality of mobile cellular communications devices (Fig. 2, BTS element 44), **but is silent on** said at least one cellular base station having a capacity associated therewith; a central station for determining available capacity of said at least one cellular base station based upon active wireless communications with said mobile cellular communications devices; and a subscription server for cooperating with said central station to provide non-real time subscription data to users on respective mobile cellular communications devices via said at least one cellular base station when the determined available capacity thereof is greater than a threshold; said subscription server cooperating with said central station to discontinue providing subscription data based upon at least one of the determined available capacity falling below the threshold, and an initiation of a telephone call corresponding to a respective mobile cellular communications device receiving non-real time subscription data.

However, Forslow teaches the packet switch bearers may be selected for non-real time such as Internet type data applications such as surfing on the worldwide web, file transfer, e-mail, and telnet, all of which require fast channel access and bursty data transfer capability (Title, Abstract, C3, L11-24, C5, L37-51, C7, L13-21, C12, L57-67 to C13, L1-27).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Minear, such that said at least one cellular base station having a capacity associated therewith; a central station for determining available capacity of said at least one cellular base station based upon active wireless

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communications with said mobile cellular communications devices; and a subscription server for cooperating with said central station to provide non-real time subscription data to users on respective mobile cellular communications devices via said at least one cellular base station when the determined available capacity thereof is greater than a threshold; said subscription server cooperating with said central station to discontinue providing subscription data based upon at least one of the determined available capacity falling below the threshold, and an initiation of a telephone call corresponding to a respective mobile cellular communications device receiving non-real time subscription data, to provide a relatively large amount of data is transmitted over a relative short time for sharing with other users.

3. Claims 4, 11 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minear/Forslow in view of Korpela (US 6,311,054).

Regarding **claims 4, 11, and 26**, Minear/Forslow teach the cellular communications system of claim 1, **but is silent on** wherein said central station maintains accounts for respective users; wherein said central station charges user accounts differently for providing wireless voice communications and non-real time subscription data. However, Korpela teaches the transferred payload data connections that preferably classified as real-time and non-real time connections with different cost (C1, L65-67 to C2, L1-11).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Minear/Forslow, such that wherein said central

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station maintains accounts for respective users; wherein said central station charges user accounts differently for providing wireless voice communications and non-real time subscription data, to provide a low charge base on a long term agreement between users and providers.

4. Claims 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minear in view of Partridge (US 6,493,321).

Regarding **claim 17**. Minear teaches a subscription server for use with a cellular communications system comprising a plurality of mobile cellular communications devices each associated with a respective user (Fig. 1), at least one cellular base station for wirelessly communicating with the plurality of mobile cellular communications devices and having a capacity associated therewith (Fig. 1, Fig. 2), **but is silent on** and a central station for determining available capacity of the at least one cellular base station based upon active wireless communications with the mobile cellular communications devices, the subscription server comprising: at least one data storage device for storing non-real time subscription data; and a controller connected to said at least one data storage device for cooperating with the central station to provide non-real time subscription data to users on respective mobile cellular communications devices via the at least one cellular base station when the determined available capacity thereof is greater than a threshold. However, Partridge teaches the packet networks inherently forward packets in non-real time manner because a node may congested and packets may be delayed or re-routed, what is meant by stating that the message is forwarded in

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non-real time manner is that even the commencement of the sending of the message may be delayed (C1, L60-67 to C2, L1-24, C5, L6-19).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Minear, such that and a central station for determining available capacity of the at least one cellular base station based upon active wireless communications with the mobile cellular communications devices, the subscription server comprising: at least one data storage device for storing non-real time subscription data; and a controller connected to said at least one data storage device for cooperating with the central station to provide non-real time subscription data to users on respective mobile cellular communications devices via the at least one cellular base station when the determined available capacity thereof is greater than a threshold, to provide the spare capacity between data and voice/non-real time transmission network in which message packets route to alternate or separate network with less cost and more in efficiency for routing.

Regarding **claim 18**, Minear/Partridge teach the subscription server of claim 17, Partridge further teach wherein said controller cooperates with the central station to discontinue providing subscription data when the determined available capacity falls below the threshold (C5, L5-19).

Regarding **claim 19**, Minear/Partridge teach the subscription server of claim 17, however, Partridge teach wherein said controller cooperates with the central station to discontinue providing subscription data (C1, 61-67 to C2, L1-24), **but is silent on to**

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respective mobile cellular communications devices based upon an initiation of a telephone call. However, Minear teaches this feature [0006].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Partridge, such that to respective mobile cellular communications devices based upon an initiation of a telephone call, to provide the flexibility to support either real-time or non-real time.

Regarding **claim 20**. Minear/Partridge teach the subscription server of claim 17, wherein said controller further cooperates with the central station. However, Minear further teaches to provide a subscription data menu to users on respective mobile cellular communications devices, and wherein users order non-real time subscription data based upon the subscription data menu (Fig. 3 [0015, 0016]).

Regarding **claim 21**. Minear/Partridge teach the subscription server of claim 17, Minear further teaches wherein the subscription data comprises at least one of news articles, books, video game data, image data, and television programming schedule data [0014, 0029].

Regarding **claim 22**. Minear/Partridge teach the subscription server of claim 17, Minear further teaches wherein the subscription data comprises electronic mail (email) data (C3, L65-67 to C4, L1-9).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Minear US 2004/0203616

Forslow US 6,608,832

Korpela US 6,311,054

Partrige US 6,493,321

Holmskar US 6,438,551

Kumar US 2003/0083041

Chen US 2003/0117964

Pillai US 20030133552

Elliott US 2004/0022237

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Vu whose telephone number is (571) 272-8131. The examiner can normally be reached on 8:00am - 6:00pm.
- If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on 571-272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael T. Vu



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